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*Attorneys for Complainant*

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case Nos. 1D-2009-67522

**CLYDE F. BOISTON, P.T.**  
14073 Meadowlands Drive  
Riverside, CA 92503

Physical Therapy License  
No. PT 23165

**A C C U S A T I O N**

Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about March 20, 1998, the Physical Therapy Board of California issued Physical Therapy License Number PT 23165 to Clyde F. Boiston, P.T. (Respondent). The Physical Therapy License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2011, unless renewed.

## JURISDICTION

brought before the Physical Therapy Board of California (Board),

Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2660 of the Code states in pertinent part:

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

“ . . .

“(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

“ . . .”

5. Section 2661 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal

nt of conviction has been affirmed on appeal or when an  
made suspending the imposition of sentence, irrespective

of a subsequent order under Section 1203.4 of the Penal Code allowing that person  
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
the verdict of guilty, or dismissing the accusation, information, or indictment.ö

6. Unprofessional conduct under section 2660 includes conduct that breaches the  
rules or ethical code of the physical therapy profession, or conduct that is unbecoming to a  
member in good standing of the physical therapy profession, and which demonstrates an  
unfitness to practice physical therapy.<sup>1</sup>

7. California Code of Regulations, title 16, section 1399.20, states in pertinent part:

öFor the purposes of denial, suspension or revocation of a license, pursuant to  
Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
considered to be substantially related to the qualifications, functions or duties of a  
person holding a license under the Physical Therapy Practice Act if to a substantial  
degree it evidences present or potential unfitness of a person to perform the functions  
authorized by the license or approval in a manner consistent with the public health,  
safety or welfare. Such crimes or acts shall include but not be limited to the  
following:

ö(a) Violating or attempting to violate, directly or indirectly, or  
assisting in or abetting the violation of, or conspiring to violate any  
provision or term of the Physical Therapy Practice Act.

ö. . .

ö(c) Violating or attempting to violate any provision or term of the  
Medical Practice Act.

ö. . . ö

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<sup>1</sup>See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.



Code states in pertinent part:

alcoholic beverages, to the extent, or in such a manner as

to be dangerous or injurious to the licensee, or to any other person or to the public,  
. . . constitutes unprofessional conduct. The record of the conviction is conclusive  
evidence of such unprofessional conduct.ö

### **COST RECOVERY**

9. Section 2661.5 of the Code addresses Cost Recovery and states:

ö(a) In any order issued in resolution of a disciplinary proceeding before the  
board, the board may request the administrative law judge to direct any licensee  
found guilty of unprofessional conduct to pay to the board a sum not to exceed the  
actual and reasonable costs of the investigation and prosecution of the case.

ö(b) The costs to be assessed shall be fixed by the administrative law judge  
and shall not in any event be increased by the board. When the board does not  
adopt a proposed decision and remands the case to an administrative law judge, the  
administrative law judge shall not increase the amount of the assessed costs  
specified in the proposed decision.

ö(c) When the payment directed in an order for payment of costs is not  
made by the licensee, the board may enforce the order of payment by bringing an  
action in any appropriate court. This right of enforcement shall be in addition to  
any other rights the board may have as to any licensee directed to pay costs.

ö(d) In any judicial action for the recovery of costs, proof of the board's  
decision shall be conclusive proof of the validity of the order of payment and the  
terms for payment.

ö(e) (1) Except as provided in paragraph (2), the board shall not renew  
or reinstate the license or approval of any person who has failed to pay  
all of the costs ordered under this section.

ö(2) Notwithstanding paragraph (1), the board may, in its  
discretion, conditionally renew or reinstate for a maximum of one year

approval of any person who demonstrates financial  
enters into a formal agreement with the board to

reimburse the board within that one year period for those unpaid costs.

õ(f) All costs recovered under this section shall be deposited in the Physical  
Therapy Fund as a reimbursement in either the fiscal year in which the costs are  
actually recovered or the previous fiscal year, as the board may direct.ö

### **FIRST CAUSE FOR DISCIPLINE**

#### **(Conviction of a Crime Substantially Related)**

10. Respondent is subject to disciplinary action under section 2660, as defined by  
sections 2660, subdivision (d), 2661, and California Code of Regulations, title 16, section  
1399.20, in that he was convicted of a crime substantially related to the qualifications, functions  
or duties of being a physical therapist. The circumstances are as follows:

A. On or about June 20, 2009, at approximately 11:45 p.m., respondent was  
driving his vehicle, weaving within his lane and onto the shoulder. A Highway Patrol  
Officer initiated an enforcement stop. Respondent's eyes were red and watery and  
respondent smelled of alcohol. When the officer asked respondent to perform field  
sobriety tests, he did not perform well. His speech was slurred and his balance poor.  
On June 21, 2009, at about 12:15 a.m., respondent was arrested for driving while  
under the influence of alcohol.

B. Respondent consented to have a blood test of his blood alcohol content.  
Results of the test taken June 21, 2009, at approximately 1:00 a.m., showed a blood  
alcohol content of .19 percent.

C. On or about August 6, 2009, a misdemeanor complaint was filed in the  
case entitled *People of the State of California v. Clyde Francis Boiston, Jr.*, Riverside  
County Superior Court, Case No. SWM087807. The complaint charged respondent  
with violations of Vehicle Code sections 23152, subdivision (a) [driving while under  
the influence of alcohol], and 23152, subdivision (b) [driving with a blood alcohol

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.08 percent, including the charge that he was driving with  
[on of over 0.15 percent].

in his truck and threw two wooden boards at her vehicle, which  
respondent was convicted of the violation on or about June 26,

2000. For this conviction, respondent was given a suspended sentence, placed on informal  
probation for three years, ordered to pay restitution, to successfully complete an anger  
management class and satisfy other terms and conditions. Respondent successfully completed the  
terms and conditions of probation.

### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapy License Number PT 23165, issued to  
Respondent Clyde F. Boiston or ordering him to be placed on probation subject to terms and  
conditions;
2. Ordering Respondent Clyde F. Boiston, P.T. to pay the Physical Therapy Board of  
California the reasonable costs of the investigation and enforcement of this case, pursuant to  
Business and Professions Code section 2661.5; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: July 12, 2010

Original Signed By:

STEVEN K. HARTZELL

Executive Officer

Physical Therapy Board of California

Department of Consumer Affairs

State of California

*Complainant*